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January 15, 2024

BY ECF

Honorable P. Kevin Castel
U.S. District Court, Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street, Courtroom 11 D
New York, NY 10007

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Re: *Fairstein v. Netflix, Inc. et al.*, No. 20-cv-8042 (PKC)
Letter Motion to Reset Trial Date

Dear Judge Castel:

Pursuant to Rule 1.C. of this Court's Individual Practices, Defendants Netflix, Inc., Ava DuVernay and Attica Locke (collectively, "Defendants") respectfully request that the trial date in the above-captioned matter, currently set for May 6, 2024 (ECF No. 270, the "Trial Setting Order"), be reset to begin the following month on June 10, 2024.¹ This is Defendants' first such request. As noted below, Plaintiff does not consent to the request. The next conference in this case is scheduled for March 7, 2024 at 2:00pm.

Prior to the Court's Trial Setting Order (ECF No 270), the Court had issued a Pre-Trial Scheduling Order (ECF No. 218), directing the parties to provide the dates that counsel were unavailable for trial through November 2024, as part of their pre-trial submissions due on February 16, 2024. The parties had begun to comply with that Order by beginning to meet and confer on trial availability.

Following receipt of the Trial Setting Order on January 11, Defendants' counsel contacted Plaintiff's counsel. Plaintiff's counsel agreed to speak with Defendants' counsel on January 12. During this discussion, I advised Plaintiff's counsel that the May 6, 2024 trial date presented a conflict as I am lead trial counsel in another trial, which is expected to last through May 24. Jury selection for that case is set for April 1, 2024. Opening statements are scheduled to begin on April 15. Because of the conflict, I asked Plaintiff's counsel if a date in June would work for them. The two Plaintiff's counsel who participated in the call, Ms. Kara Gorycki and Mr. Stuart Bernstein, represented that they did not have trial conflicts in June. During the conversation, my co-counsel Natalie Spears and I also told Plaintiff's counsel that Ms. Spears and defendant Attica Locke have

¹ Defendants also submit this letter pursuant to Rule 3.A. of this Court's Individual Practices in the event the Court determines this request requires a formal motion.



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children who have high school graduations during May, and that I have a child who has a college graduation in May. Despite their earlier discussions with Defendants' counsel regarding trial availability, Plaintiff's counsel notified us on January 14 that they intend to object to this request. I immediately asked Plaintiff's counsel, by email, to advise me whether any of Plaintiff's counsel would have a conflict with trial commencing in June. Plaintiff's counsel provided no such conflicts in response.

I am lead trial counsel in this case and have invested substantial time and resources over the past several months preparing this case for trial. My firm was retained and began work on the matter in February 2023. Our firm made a formal appearance in September 2023, after the Court denied Defendants' motion for summary judgment. Defendants request that the trial date be adjourned for a matter of weeks to early June as I am scheduled for trial in *Holley, et al. v. Gilead Sciences, Inc.*, Case No. 18-cv-06972-JST (N.D. Cal.), from April 1, 2024 through approximately May 24, 2024. As described more fully below, in addition to June, I am also available for trial starting August 19, 2024, through mid-October 2024.

Defendants' periods of unavailability are due to the following conflicts: (a) April 1, 2024 – approximately May 24, 2024 (trial conflict for lead trial counsel in *Holley, et al. v. Gilead Sciences, Inc.*, Case No. 18-cv-06972-JST (N.D. Cal.) (first bellwether trial) and Defendant Attica Locke unavailability during the last week of May due to high school graduation of her child); (b) July 11, 2024 – August 10, 2024 (trial conflict for lead trial counsel in *Purnell v. Monsanto Co., et al.*, Case No. 210602347 (Philadelphia Court of Common Pleas)); and (c) November 1, 2024 – approximately December 13, 2024 (trial conflict for lead trial counsel in *Holley, et al. v. Gilead Sciences, Inc.*, Case No. 18-cv-06972-JST (N.D. Cal.) (second bellwether trial)).

Defendants respectfully request that the trial in this matter be reset for June 10, 2024. Should that date not be amenable to the Court, Defendants respectfully request that the trial date be reset taking into account the unavailability dates provided above.

Sincerely,

Bart H. Williams

A handwritten signature in black ink that reads "Bart H. Williams".

*Counsel for Defendants Netflix, Inc., Ava
DuVernay and Attica Locke*